

**United States Government  
National Labor Relations Board  
OFFICE OF THE GENERAL COUNSEL**

## Advice Memorandum

DATE: June 23, 2009

TO : Rosemary Pye, Regional Director  
Region 1

FROM : Barry J. Kearney, Associate General Counsel  
Division of Advice

SUBJECT: International Brotherhood of Teamsters 536-2545-0100  
Local 25, Various Employers 536-2545-0600  
Case 1-CB-10882 536-2545-  
1600  
536-2581-6767  
536-6767-7800

This case was submitted for advice as to whether the Union violated Section 8(b)(1)(A) and (2) by referring applicants from its Regular Employee List for captain and coordinator positions without applying objective criteria. We conclude that the Union has a legitimate interest in deciding who serves as captains and coordinators since they represent the Union in the grievance process. We further conclude that the Union's conduct surrounding the selection of the captains and coordinators was not arbitrary, invidious, or irrelevant to legitimate union interests.

### FACTS

The International Brotherhood of Teamsters Local 25 (Union or Local 25) is the exclusive source of drivers for the motion picture industry in Massachusetts and other portions of New England. Generally, when production companies' employees are represented by the Union, the parties execute a standard Letter of Agreement.

The Letter of Agreement grants recognition to Local 25 as the exclusive bargaining representative of all transportation coordinators, captains, specialized equipment drivers, chauffeurs, and helpers employed in connection with the production of motion pictures. The Agreement provides for the captains and coordinators to handle grievances in the following manner:

Article 14 Grievances

All grievances shall be directed in the first instance to the Teamster Captain or Steward; if the grievance cannot be resolved at that level, the Coordinator will meet with a person from the Production to resolve the problem . . .

The Letter of Agreement also contains an exclusive hiring hall provision. On July 18, 2003, the Union adopted the "Motion Picture and Television Production Industry Referral Rules" for operating the exclusive hiring hall. The rules required the Union to maintain two referral lists - the Regular Employee List and the Casual Employee List. Employers had the ultimate authority to decide which applicants to hire from the lists. When requested, the Union supplied an employer with the number of names requested from the Regular List in the order that they appeared on the list.

Once the employer exhausted names from the Regular List, the Union provided the employer with the complete Casual List. The employer was free to select from the Casual List without considering the order that the names appeared on the list. Those rules also granted employers the right to select any individual from the Regular List, without considering the order that the names appeared on the list, as captains and coordinators.

The referral system for the exclusive hiring hall was the subject in International Brotherhood of Teamsters Local 25 (various Employers), Cases 1-CB-10710, 1-CB-10712 and 1-CB-10732, Advice Memorandum dated January 4, 2008. [FOIA Exemptions 2 and 5]

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On December 16, 2007, just prior to the issuing of the above cited Advice Memorandum, the Union made changes to the administration of its job referral system in its written and published Referral Rules ("2007 Rules"). The rules for selecting applicants from the Regular and Casual Lists remained the same. However, Article V of the new rules granted the Union, rather than employers, the right to designate the captains and coordinators:

For Coordinator/Captain:

The Union will designate qualified Coordinators and Captains. The Union will make every reasonable effort, for good cause shown to the satisfaction of the Union, to satisfy a company's request to utilize a coordinator of its choice from outside the Teamsters Local 25's Motion Picture jurisdiction provided the Coordinator agrees to follow and observe the Local 25 referral rules and to work in conjunction with the designated Local 25 Coordinators and Captains.

Other changes included revising the captains and coordinators' job descriptions to make it clear that it is the employer who actually selects the other drivers from the lists, and to show that the captains and coordinators have no independent supervisory authority by stating that they are only in "general charge" of the Company's transportation requirements, and operate under the direction of the Company. The Region determined that under the new rules the captains and coordinators in the instant case are

representatives of the Union and not 2(11) supervisors.

Despite the revisions in the 2007 Rules, Article 6 of the parties' Letter of Agreement continues to grant the Union the right to administer the referral system:

. . . (1) Applicants will be referred to the Company from the Union on a nondiscriminatory basis, and such referral will in no way be affected by Union membership or any aspect thereof.

Further, notwithstanding the referral procedure mandated by the rules, in reality the transportation coordinators call referrals from the Casual List and typically do not consult with an employer agent on the choices unless there is a request for a particular driver.

The transportation coordinators used different methods of calling casuals. Some looked for certain types of licenses and did not leave messages, and some called individuals based on personal experience. Some coordinators did not always use the Casual list but received names by calling the Union or another local directly. Coordinators sometimes ran out of names on the Casual list and called the Union to send more. The employers never consulted with the coordinators over whom to use for particular assignments.

In 2008, the Union president or secretary/treasurer selected from the Regular List six different individuals to act as coordinators and at least two of the six acted as captains. The appointments were not based on the individuals' positions on the Regular List.

The Charging Party alleges that the Union applied subjective criteria in the selection of individuals for referral from its Casual List, and unilaterally selected its transportation captains and coordinators for various projects without informing its members of the selection criteria. The Region found merit to the allegation that the Union applied subjective criteria in selecting individuals for referral from its Casual List, and has not submitted that issue to Advice.

The Union asserts that members are aware that Local 25 has the right to designate qualified captains and coordinators pursuant to Article V of the 2007 rules, and that those selected have the requisite experience in the industry. The Union further asserts that it designated only those individuals from the Regular List with significant experience in the industry to be captains and coordinators.

#### ACTION

We conclude that the Union has a legitimate interest in deciding who serves as captains and coordinators since they represent the Union in the grievance process. We further conclude that the Union's conduct surrounding the selection of the captains and coordinators in the instant case was not arbitrary, invidious, or irrelevant to legitimate Union interests.

A "union, absent an unlawful motive, has a legitimate objective in selecting whomever it considers to be the best choice for steward and to police its collective bargaining agreements."<sup>1</sup> The Board does not require a union to follow "the normal order of referral" in selecting a steward,<sup>2</sup> or even to demonstrate that it based its selection on substantial or legitimate considerations. Rather, the Board only inquires as to whether the union's conduct is arbitrary, invidious, or irrelevant to legitimate union interests.<sup>3</sup> The Board has also applied these standards to the appointment of union officials other than stewards.<sup>4</sup>

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<sup>1</sup> Plumbers Local 520 (Aycok Inc.), 282 NLRB 1228, 1228 fn. 2 (1987).

<sup>2</sup> Id.; See also Teamsters, Local 959 (Ocean Technology, Inc.), 239 NLRB 1387, 1388 (1979); Painters, District Council No. 2 (Paintsmiths, Inc.), 239 NLRB 1378, 1379 (1979), enf. denied, 620 F.2d 1326 (8th Cir. 1980).

<sup>3</sup> Ibid.

<sup>4</sup> Shenango Inc., 237 NLRB 1355, 1355 (1978) (union had a legitimate interest in appointing people to the safety

Here, we conclude that the captains and coordinators are responsible for administering the collective-bargaining agreement on behalf of the Union. Both the captains and coordinators represent the Union in the grievance process. Article 14 states that a captain or steward should receive all grievances in the first instance and that, if unresolved, the Union coordinator will meet with a person from production to attempt to resolve the problem. Thus, the Union is relying on the captains and coordinators to perform much of the same duties as stewards regarding grievances. Additionally, there is no evidence that the captains and coordinators have represented employers at any level of the grievance process since the Union adopted the 2007 rules.

Because the captains and coordinators administer the collective-bargaining agreement, we need only consider whether the Union's considerations in making the appointments were arbitrary, invidious, or irrelevant to legitimate Union interests.<sup>5</sup> We conclude that there is no evidence that the Union's selection of captains and coordinators was arbitrary, invidious, or based on irrelevant considerations. The Union has a legitimate interest in ensuring the presence of experienced, qualified, and loyal captains and coordinators to administer the collective bargaining agreement. The collective bargaining agreement requires that the captains and coordinators be "qualified" and the Union only considered applicants from the Regular List who have many years of experience in the movie industry. There is no evidence that the Union selection of captains and coordinators was arbitrary or invidious.

Finally, we find the issue of selecting captains and coordinators in the instant case distinguishable from that in International Brotherhood of Teamsters Local 107 (Paramount), involving another local union in the same industry.<sup>6</sup> In Paramount, the union alone selected the movie

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committee to best serve the Union and assist in administering the contract).

<sup>5</sup> Note 2, supra.

captains without the application of objective criteria. The captains were line supervisors that administered the collective-bargaining agreement on behalf of the employer. The captains, in turn, exercised unfettered discretion in the selection of driver applicants for referral. Advice concluded that the union acted unlawfully in its referral of drivers because the entire process, which the union controlled, lacked objective criteria for selection. In the instant case, however, the captains and coordinators are representatives of the Union, not supervisors, and they administer the grievance process on behalf of the Union, not the employers. Accordingly, the standard for operating a hiring hall pursuant to objective criteria applicable in Paramount is not applicable here.

Further, while the employers here has the purported authority to select employees for referral, the evidence indicates that the employers have ceded that responsibility to the Union. The coordinators do not consult with employers in selecting applicants but do occasionally consult with the Union. Thus, the coordinators, who the Region has determined no longer have any supervisory authority, are acting on behalf of the Union, not the employers, in administering the referral system. While the Union, through the coordinators, has unlawfully used subjective criteria in selecting applicants for referral from the casual list, the Union still has the right to exercise its discretion in choosing the coordinators and captains because those individuals are engaged in contract administration on behalf of the Union.

Accordingly, the Region should dismiss this allegation of the charge, absent withdrawal.

/s/  
B.J.K.

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<sup>6</sup> Case 4-CB-9946, Advice Memorandum dated August 29, 2008.